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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,769	04/19/2004	Don Rader		4327

7590 02/28/2007
Godfrey Yew
Suite 1
3566 Polaris Avenue
Las Vegas, NV 89103

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/826,769	RADER ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Combes (471) in view of Dew et al (843).

Combes discloses low-calorie salad dressing having smooth creamy, organoleptic characteristics. At example 2, low fat dressing is made to contain microreticulated microcrystalline cellulose, soybean oil and tapioca starch. Alternative modified starches are suggested at column 15, lines 5-9. The dressing is made by combining the cellulose ingredient in liquid form with the water, sugar, flavors and starch and mixed in a high shear-mixing tank. Then gums, egg white, sodium caseinate and oils are added in with high shear mixing. The starch base was prepared by gelatinization and then added in to form a viscous dressing. The claims appear to differ from Combes in the recitation of the inclusion of precipitated silica. Dew teaches the use of precipitated silica in the conversion of organic liquids to dry free flowing particles. At column 7, lines 20-21,

vegetable oil is described as an organic liquid. In example 3, vitamin E is converted from a liquid to a powder in a composition containing 60% vitamin E. Although not specifically mentioned in Dew, the powdered liquids in Dew offer an obvious advantage in permitting accurate and clean measurement of these powdered ingredients. It would have been obvious to one of ordinary skill in the art to use the powdered oil source taught by Dew as an ingredient in the dressing of Combes in order to provide an easier and cleaner way of accurately measuring the amount of oil use in the formulation of Combes dressing. It is appreciated that the ratio of cellulose to oil is not mentioned but one of ordinary skill in the art could easily adjust the ratio of cellulose to oil in the dressing formulation according to the extent of calories desired in the dressing product. It is appreciated that maltodextrin is not mentioned but the corn syrup solids used as a source of sweetener have dextrose equivalent within the range of the claims. No unobvious or unexpected result is seen from the use of maltodextrin, in particular. It is appreciated that all of ingredients are not in the composition in the particular ratio wet forth in the claims but no unobvious or unexpected result is seen from this feature, particularly when an emulsion is finally formed.

Claims 7-8 and 10-12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The dependent claims depend from more than one claim but the dependency is not in the alternative form.

Claim 9 contains the trademark/trade name Sipernat. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to

identify/describe precipitated silica and, accordingly, the identification/description is indefinite.

Claims 5-12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turbak (381) in view of Combes and Dew.

Examples 8-16 show the combination of microfibrillated cellulose and soybean oil to form oil in water emulsion. The ingredients are mixed in a blender. The source of the microfibrillated cellulose is described at column 2, lines 27-35 as being from sources that include a powdered source of cellulose. The claims appear to differ from Turbak in the recitation of the mixing time of the composition. No unobvious or unexpected result is seen from the mixing time used in Turbak, particularly when an emulsion is the desired final result. In example 21 Thousand Island dressing is prepared using microfibrillated cellulose. It is appreciated that starch and precipitated silica are not mentioned but Combes and Dew are relied upon to show the use of these ingredients in salad dressing. Combes teaches low calorie salad dressing having smooth creamy, organoleptic characteristics. At example 2, low fat dressing is made to contain microreticulated microcrystalline cellulose, soybean oil and tapioca starch. Dew teaches the use of precipitated silica in the

conversion of organic liquids like vegetable oil to dry free flowing particles. The powdered oil source taught by Dew would have been an obvious oil ingredient in the dressing of Combes. It is appreciated that all of ingredients are not in the composition in the particular ratio set forth in the claims but no unobvious or unexpected result is seen from this feature, particularly when an emulsion is finally formed.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

Art Unit: 1761

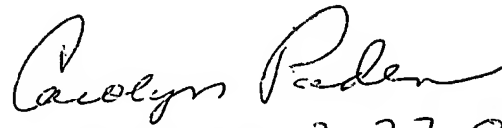
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217-9197 (toll-free).


CAROLYN PADEN 2-27-07
PRIMARY EXAMINER 1761